

agent. Upon these facts the plaintiff's action cannot be maintained. After the termination of the defendants' liability as common carriers, they were answerable only for injuries happening in consequence of their own negligence. They were not responsible for losses which they could not have prevented by the exercise of due care. Sh. & Red. Neg., s. 8.

*Judgment for the defendants.*

STANLEY, J., did not sit: the others concurred.

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HODGDON v. DARLING.

An agreed case, in which the defendant has no interest, does not authorize a decision of a controversy between the plaintiff and other persons who are not parties to the suit.

ASSUMPSIT. Facts agreed. The defendant owes the plaintiff the amount claimed for labor performed by the plaintiff in erecting a house for the defendant. The plaintiff's lien on the house, under G. L., c. 139, ss. 11, 12, is secured by an attachment made in this suit within the prescribed ninety days. Similar liens of other workmen on the same house are secured by attachments made in other suits at different times within the ninety days. The attached property not being sufficient to satisfy all the claims, the question was submitted whether the first attaching creditor should be paid in full, or whether the attached property should be applied in proportional satisfaction of all the claims.

*A. R. Evans*, for the plaintiff.

*Ray, Drew & Jordan*, for the defendant.

CLARK, J. The defendant, having no interest in the case, declines to argue it. Whether his house is applied in full payment of some of the claims, or in part payment of all, is a matter of indifference to him. Between him and the plaintiff there is no contention. If there is a controversy between this plaintiff and the plaintiffs in the other suits as to the precedence or equality of lien, it cannot be determined in a proceeding in which only one of the contestants is a party. Advising them, in either of the suits at law, how to levy the executions to which they will be entitled when they recover judgments, would not be an exercise of judicial power. *Stone v. Hobart*, 8 Pick. 464; *Smith v. Cudworth*, 24 Pick. 196; *State v. Stas*, 17 N. H. 558; *State v. Stevens*, 36 N. H. 59.

*Case discharged.*

ALLEN, J., did not sit: the others concurred.

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68	210
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